HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the Case.

W.P. No. 4655 of 2001 (S/S)

Sanjeev Kumar & ors.

Vs.

State of U.A. & ors.

Approved for reporting. (Yes)

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~~No approved for reporting~~

Date of Decision: 13.06.2005.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 4655 of 2001 (SS)

1. Sanjeev Kumar
2. Karan Singh
3. Om Pal Singh
4. Budh Pal
5. Ram Singh
6. Jagdish Singh
7. Ram Kumar Pal
8. Budh Singh
9. Shibba Singh ..... Petitioners

Versus

1. State of Uttaranchal
2. Chief Engineer (Designs) & Director Research Institute, Irrigation Department, Roorkee
3. Director, State Engineers Training Institute Kalagarh, Pauri Garhwal
4. Deputy Director, Administration, State Engineers Training Institute, Kalagarh. ..... Respondents

Mr. P.S. Adhikari, Sr. Advocate assisted by Mr. B.S. Adhikari, Advocate
Standing Counsel for the respondents.

Dated: June, 13, 2005

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioners have prayed for a writ of mandamus directing the respondents to promote the petitioners as work charge employees from 7.2.1997.

Briefly stated, the petitioners were employed as daily wager employees on different dates from 1982 to 1985, in State Engineers Training Institute, Kalagarh, District Pauri Garhwal. The petitioners were illegally terminated from service by the

respondents against which reference was made to the Labour Court, Dehradun under Industrial Disputes Act, 1947. The Labour Court vide award dated 6.4.1995 reinstated the petitioners and others in service along with 50% back wages. The Respondents filed a writ petition No. 32073 of 1995 before the Allahabad High Court against the award. Allahabad High Court vide interim order dated 14.11.1995 directed the respondents to provide employment to the petitioners but payment part of 50% wages was stayed. The petitioners including other 22 workers of the department were reinstated in the service as daily wagers. The respondent no.1 vide its letter dated 24.2.1997 directed the Chief Engineer (Gr. II) to promote the petitioners as workcharged employees. The grievance of the petitioners is that the respondent department despite the clear instruction by the State Government discriminating the petitioners for being appointed in work-charge and the persons junior to them are being considered for the same.

Letter dated 24.2.1997 by the respondent no. 1 categorically stated that at the first stage, the workers working from 1985 and before be promoted as work-charged employees against the vacant posts up to 15.4.1997 and thereafter the workers of 1986 to 1990 be promoted in the work-charge up to 31.5.97. Remaining workers also be promoted till 15.7.1997. The extract of the letter is as under:

कार्य प्रभारित अधिष्ठान में उपलब्ध हुई रिक्तियों पर आरक्षण संबन्धी नियमें/षासनादेषों का अनुपालन करते हुए वरिष्ठता क्रम के आधार पर प्रथम चरण में 1985 तक के दैनिक वेतन भोगी श्रमिकों को सेवायोजित किया जाय। विभिन्न मॅडलों में कार्य की आवश्यकता रिक्तियों की उपलब्धता तथा दैनिक वेतन भोगी श्रमिकों की संख्या को ध्यान में रखते हुए दैनिक वेतन भोगी श्रमिकों का समायोजन यथास्थिति मुख्य अभियन्ता स्तर 2 तथा मुख्य अभियन्ता स्तर–1 द्वारा किया जाये। शेष प्रकरणों का निस्तारण इस कार्यालय द्वारा किया जायेगा। दैनिक वेतन भोगी जिस पद पर कार्यरत हैं

उसी पद पर उसकी विशिष्ठता निर्धारित की जाय तथा योग्यतानुसार उसी पद पर या पद की अनुपलब्धता की स्थिति में समकक्ष पद पर नियुक्त किया जाय।

प्रथम चरण में 1985 तथा इससे पूर्व के कार्यरत दैनिक वेतनभोगी श्रमिकों को कार्यप्रभारित अधिष्ठान में रिक्त हुए पदों पर सेवायोजित करने के आदेश 15–4–97 तक तथा तत्पश्चात रिक्त पदों की उपलब्धता एवं आरक्षण संबन्धी नियमों की अनुपालना को ध्यान में रखते हुए 1986 से 1990 तक सेवायोजित श्रमिकों को कार्यप्रभारित अधिष्ठान में नियुक्ति हेतु 31–5–97 तक तथा शेष को 15–7–97 तक नियुक्त करने की कार्यवाही की जाय।

Thus from the above G.O. it is clear that promotion of the workers to work-charge establishment should be made according to their seniority. The petitioners have alleged that the respondents are not following the rule or seniority and making promotion to the work-charge establishment arbitrarily.

The respondents in paragraph 10 of the counter affidavit have mentioned that out of 31 daily wagers 22 workers have been appointed in work-charge establishment in 2001, as they submitted affidavits to the affect that they shall forego 50% back wages awarded by the Labour Court. Realisation of back wages has been stayed by the order dated 14.11.1995 in Writ Petition No. 32073 of 1995. The respondents have made clear assertion that as the petitioners are not willing to forego their claim of 50% back wages, as awarded by the Labour Court, which implies that they want to contest the Writ Petition No. 32073 of 1995 which is still pending.

Such contention of the respondents is against the spirit of the G.O. dated 24.2.1997. The respondents have no justification to fix any term or condition for appointment in the work-charge establishment against the procedure enumerated in the above Government order. Admittedly Writ Petition No. 32073 of 1995 is still pending before this Court and payment of 50% back

wages to the petitioner is the subject matter of the decision of this writ petition. The respondents cannot make any pressure on the petitioner to forego their claim of 50% back wages in lieu of their appointment in work-charge establishment.

The respondents are, therefore, directed to appoint the petitioners in the work-charge establishment according to their seniority and according to the procedure provided in the Government Order dated 24.2.1997 from the date on which junior to them were promoted.

Accordingly the writ petition is allowed. No order as to costs.

Rajesh Tandon, J.

June 13, 2005

*Dhyani